

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1175 of 1992**

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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AJAY AMRITLAL BHIMJIYANI - Appellant(s)
Versus
RAJU HARIRAM NANKANI & 1 - Defendant(s)

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Appearance :

MR CH VORA for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 11.12.91 passed by the Motor Accident Claims Tribunal (Auxilliary) at Bhuj, Kutch in MACP No. 305 of 1985 whereby the Tribunal awarded a sum of Rs. 66,200/- by way of compensation payable to the original claimant by the original opponent nos. 1 & 2 jointly and severally.

2. The original applicant-present appellant had filed claim petition seeking compensation to the tune of Rs.

1,00,000/- in respect of the injuries sustained due to a vehicular accident which occurred on 06.06.85 while the appellant was about to hire a rickshaw in order to go to the bus stand at Ganga naka, Anjar. At that time, the opponent no.1 driving motorcycle bearing no. GJX 4899 rashly and negligently came from the opposite direction and dashed with the appellant. The appellant therefore sustained serious injuries and was required to be rushed to the hospital. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has erred in not properly appreciating the evidence adduced and thereby awarding only Rs. 66,200/- against the claim of Rs. 1,00,000/-. He has further contended that the Tribunal ought to have appreciated that the appellant is a dental surgeon and is required to work for a long time in a standing position which is difficult after the accident thereby resulting into future loss of income. He has also contended that the Tribunal ought to have awarded Rs 20,000/- under the head of pain, shock and suffering against which the Tribunal has awarded only Rs. 15000/-.

4. Heard learned counsel and have gone through the documents placed on record including the award of the

Tribunal. The Tribunal has considered the oral and documentary evidence in detail and has assessed the future monthly income of the appellant at Rs. 2,000/- and medical disability at 10% in the absence of relevant documents to substantiate the claim of 25% permanent partial disability. Even if the same is considered, the Tribunal ought to have taken note of the future loss of income in view of the 10% permanent partial disability and the decision of the Apex Court in the case of "**U.P. State Road Transport Corporation (supra)**", as per which the future loss is to be calculated on the basis of average of double the income which comes to Rs. 3,000/- in the present case. Looking to the permanent partial disability of 10%, the per month loss shall come to Rs. 300/- which in turn is Rs. 3,600/- per annum.

4.1 The Tribunal has in the present case applied the multiplier of 18 years which in my opinion is on the higher side and a multiplier of 15 would be just and proper in the present case. Hence, the future loss of income shall come to Rs. 54,000/- (Rs. 3,600/- x 15). Since the Tribunal has already awarded Rs. 43,200/-, an additional amount of Rs. 10,800/- shall be awarded to the appellant under the head of future loss of income.

4.2 As regards the contention of pain, shock and suffering is concerned, in my opinion looking to the days

of hospitalisation, the percentage of disability, Rs. 15,000/- is just and proper. In that view of the matter, no interference is required under the head of pain, shock and suffering.

5. In the premises aforesaid, appeal is partly allowed. The appellant shall be entitled to an additional amount of **Rs. 10,800/-** with running interest at the rate of **6%** from the date of application till realisation payable by respondent nos. 1 & 2 jointly and severally. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S.JHAVERI,J.)

Suresh*